

Memorandum

To: DISTRICT DIRECTORS

Date: May 24, 2002

Attn: Region/District Division Chiefs R/W
Deputy District Director Planning
Deputy District Director Right of Way
Engineering/Surveys
Deputy District Director Maintenance
Deputy District Director Environmental
Deputy District Director Design

From: **DEPARTMENT OF TRANSPORTATION**
DIVISION OF RIGHT OF WAY
MAIL STATION 37

File: **PROJECT DELIVERY**
Federal Land Transfers

Subject: Memorandum of Understanding for Perfection of Title along Existing Segments
of Highway Through United States Forest Service Lands in the State of California

Transmitted herewith for immediate implementation is the executed Memorandum of Understanding (MOU) entitled Perfection of Title along Existing Segments of Highway through United States Forest Service (USFS) Lands in the State of California. This MOU establishes procedural agreement between the Department, FHWA and USFS for perfecting highway easement rights for existing routes through USFS Lands. It does not apply to new highway construction projects.

The document requires that the Deputy District Directors for Planning, provide a prioritized listing of selected routes no later than January 20, of each calendar year to the designated Forest Service Representative in each National Forest, with a copy to FHWA. Right of Way Engineering/Surveys will provide input to Planning, concerning which routes need to have title perfected. Adjacent Districts/Regions will need to jointly prioritize routes that cross District/Region boundaries in order to realize the maximum efficiency of the agreed process. I would like to have this project fully completed over the next four fiscal years.

Once the routes are chosen and agreed upon, the United States Forest Service and the District will make arrangements for field verification. The Local Maintenance Superintendent and a District Survey Representative will be part of the field verification team along with representatives from the USFS. A representative from Environmental should also be included in the field

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verification team, to identify any environmentally sensitive locations for consideration in determining the easement description.

Right of Way Engineering/Surveys will prepare the legal descriptions in collaboration with the Forest Service surveyors. Right of Way will process the paperwork to affect the recordation of the highway easement deed, and Right of Way will act as functional coordinator/facilitator to ensure the process stays on track.

Perfecting title throughout USFS Lands in a single easement deed benefits both the Department and the USFS by cleaning up fractured land records, by including areas within roadways currently only under permit rights, or without any documented rights, and by clarifying ongoing highway easement operational issues and rights. Additionally, through the recorded highway easement deed, the Department's rights will be protected should the property subsequently be deleted from USFS ownership through sale or land exchange.

As general information, there are approximately 1,111 miles of existing highway segments over both USFS and Bureau of Land Management (BLM) lands within the State. Districts 2, 3, 8, and 9 having the largest number of highway miles.

District	Approximate Miles
1	22
2	255
3	170
5	10
6	45
8	200
9	220
10	110
11	75
12	4
Total	1,111

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Expense Authorization (EA) OR0032 has been established to track this effort. A project workplan needs to be developed and managed for this effort, and also to generate resources for future fiscal budgets. Any efforts associated with perfecting title along existing routes through United States Forest Lands should be charged to the above mentioned EA.

A handwritten signature in black ink, appearing to read 'B. Felker', with a stylized, cursive script.

BRENT FELKER

Chief Engineer

Attachment

c: Headquarters Project Development Division Chiefs

MEMORANDUM OF UNDERSTANDING
Between
FEDERAL HIGHWAY ADMINISTRATION-CALIFORNIA DIVISION
CALIFORNIA DEPARTMENT OF TRANSPORTATION
And
USDA, FOREST SERVICE,
PACIFIC SOUTHWEST REGION And
INTERMOUNTAIN REGION
TO PERFECT TITLE ALONG SEGMENTS OF EXISTING HIGHWAYS
ON FOREST SERVICE LANDS IN THE STATE OF CALIFORNIA

This MEMORANDUM of UNDERSTANDING (MOU) is made and entered into by and between the Federal Highway Administration, California Division, hereinafter referred to as the FHWA, the State of California Department of Transportation, hereinafter referred to as the Department, and the USDA, Forest Service, Pacific Southwest and Intermountain Regions, hereinafter referred to as the Forest Service, and for purposes of this agreement, hereinafter referred to collectively as "The Parties".

1. HISTORY and CONCEPT

Title 23 of the Code of Federal Regulations (CFR), Subpart F, Subsection 710.601, establishes provisions and procedures whereby federal lands, or interests in lands owned by the United States, may be transferred to a state highway department or its designee, based upon the documented need of those lands for a highway transportation project and the concurrence of the Federal land owner. This procedure is known as a Federal Land Transfer.

In 1998, the United States Department of Transportation, Federal Highway Administration and the USDA, Forest Service, signed a National MOU to establish a streamlined, consistent process for Federal Land Transfers, whereby the FHWA, on behalf of the United States of America may appropriate and transfer National Forest System Lands (NFSL) to the States for highway purposes. This transfer is subject to the conditions of the Authorized Officer of the Forest Service, acting on behalf of the Secretary of Agriculture. The conditions provide for the adequate protection and utilization of NFSL while protecting the interests of the traveling public.

Prior to implementation of the National MOU, the Department and the Forest Service entered into a Pilot Project on State Highway 4. This precedent-setting project allowed unrecorded sections of the State highway system to be incorporated with other previously recorded highway segments resulting in one continuous easement for the State of California along a sixty-five mile tract within the Stanislaus and Toiyabe National Forests. The project utilized a simplified survey and legal description process based on the premise that the existing highway is a physical monument that can be referenced in the legal description.

2. PURPOSE and BENEFIT

The purpose of this MOU is to establish a process that will allow the parties to perfect title along previously unrecorded segments of highway existing on Forest Service lands in the State of California. The process calls for incorporating a narrative, streamlined format to describe the easement interest that will be transferred to the State of California, versus the typical metes and bounds description. The legal description will be "sufficient to describe", the lands to be transferred and will fulfill recordation requirements. The benefits of this method are two fold: a savings in staff time and resources typically allocated to surveying and mapping efforts; and a more accurate inventory of the land interests of the United States in the State of California. The ultimate result will be more effective and efficient use of the public's tax dollars.

This MOU calls for a partnering effort by the FHWA, the Department, and the Forest Service to allow the highway easement across NFSL to be documented. It ensures the parties will continue to refine their communication efforts to continue this streamlined project delivery process for future efforts relating to both the interstate and state highway system. The parties recommend this process be used as a national model to augment federal land transfer procedures.

3. AUTHORITY

This MOU is established in accordance with the following laws and regulations:

Title 23 USC, Sections 317 and 107(d)
Transportation Equity Act for the 21st Century, 1998 (TEA 21), Sec 1309
National Environmental Policy Act (NEPA) of 1969, 42 USC 4321 et. seq.
40 CFR, Parts 1500 through 1508 – Council of Environmental Quality Regulations
23 CFR, Part 771 – Environmental Impact and Related Procedures
23 CFR, Part 710, Subpart F, Subsection 710.601, Federal Land Transfer
36 CFR, Part 219 – National Forests Management Act Regulations

4. THE PROCESS and HOW IT WILL BE IMPLEMENTED

Implementation of this MOU will be limited to those highways and/or segments of highways across NFSL existing on the date this MOU is signed by the parties. It is not applicable to new construction or proposed improvements outside such existing highways or segments of highways that would be subject to the appropriate authority of 23 USC Sections 317 and 107(d). This streamlined process is based upon the following criteria for project implementation:

A. Parameters

1. The highway exists and is part of the Federal-aid system.

2. All parties agree the existing use of Forest Service land for the highway is appropriate and necessary to serve the traveling public.
3. The land owned by the United States is reasonably necessary for the highway right-of-way.
4. The highway or segments of highway selected for inclusion in this process have no evidence of appropriation to the State of California or its designee by a recorded highway easement deed. However, existing areas of highway previously appropriated may be incorporated with the unrecorded segments within NFSL in order to create a single controlling document for the entire corridor.
5. There will be no change in land use affected by the implementation of this process.

B. National Environmental Policy Act (NEPA)

1. In keeping with the terms and conditions of the 1998 National MOU, the FHWA is recognized as lead agency for those actions relating to the appropriation and transfer of NFSL for highway purposes. The Forest Service will serve as a cooperating agency.
2. The action proposed is to perfect title for the operation and maintenance of existing highways in conformance with individual Forest Land Management Plans. Office of General Counsel, Department of Agriculture, and Federal Highway Administration legal counsel agree that property right appropriation will not precipitate provisions of the National Environmental Policy Act on the part of the Forest Service because transfer of title, in this case a property right, from one Federal agency to another does not constitute a significant Federal action on the part of the transferor.
3. The parties agree that the required NEPA action for this process to perfect title is a Categorical Exclusion (CE), in accordance with 23 CFR 771.117(e) and that a CE also satisfies the requirements of the California Environmental Quality Act (CEQA).
4. The Department is the initiating party and will work in partnership with the FHWA Division Administrator in the preparation of the joint CEQA/NEPA environmental documents.
5. The Forest Service is not taking an action subject to NEPA and is not required to sign the environmental documents.

C. Route/Corridor Selection

1. Proper timing and scheduling is crucial to the success of this program. The Department, as the initiating party, will prioritize existing highway routes upon which the State desires to perfect title by means of a highway easement deed.
2. Each of the Department's Regional/District, Deputy District Directors for Planning will provide a prioritized listing of routes to the designated Forest Service representative on each Forest no later than January 20th of each calendar year. A copy of the listing will also be provided to the FHWA.
3. The Forest Service will concur with those priorities based on its ability to support the selected routes and respond via a Letter of Support no later than 30 days subsequent to receiving the Department's nominated routes. A copy of each Forest's Letter of Support will be forwarded to their respective Forest Service Regional Office. When a route has been selected, the parties will meet to determine the following:

a. Responsibilities

- (1). Agree on the action and responsibilities of each agency for the development of the easement deed.
- (2). Develop a timeline with names of persons responsible for completing specific items.

b. Right-of-Way (R/W) Width

- (1) Establish the default r/w width using a standard distance from the centerline and existing highway post mile markers for location of features. Typically, this distance will be 100 feet from the centerline. Any necessary deviations shall be incorporated into the description.

The Forest Service and the Department will meet to discuss each proposed r/w width and select the appropriate method/means to describe the proposed easement area. If necessary, and upon concurrence of the parties, other methods may be developed to sufficiently describe the r/w width for incorporation into the highway easement deed.

- (2) Identify special features, i.e., cultural resource sites, existing uses, planned uses, road intersections, utility easements, drainage facilities, etc. within the proposed r/w width that may cause an adjustment to the r/w width.

c. Field Verification

- (1) Establish a team to verify, in the field, actual ground conditions that will require deviations from the standard easement width designated for the route/corridor that will be identified in the legal description of the highway easement deed. The following are recommended as team members:

Forest Service: Ranger District Representative
Forest Cadastral Surveyor
Engineering Representative

Caltrans: Local Maintenance Superintendent
District R/W Engineering Representative

- (2) The team will ground proof r/w widths and document them for incorporation into the highway easement deed.

5. LEGAL DESCRIPTION

The Department's District R/W Engineering Staff, in collaboration with Forest Service surveyors, will prepare the legal description for the highway easement deed. The description will reflect the fact that the highway exists in its present location. A copy of the description will be provided to the Forest Service for inclusion in its Letter of Consent. The parties will ensure that the legal descriptions in both documents are a complete match and error free. Subsequently discovered minor errors, e.g. typographical errors or a reversed bearing, will not be cause for nullification of the new highway easement.

The description will be in a format appropriate to the existing conditions as agreed upon by the Department's District R/W Engineering Staff and the Forest Service surveyors. It will be "sufficient to describe" the r/w area required for the corridor and will meet State of California requirements for recordation. Intersecting Forest Service roads, trails, structures, and facilities will be excluded. Waste and borrow sites permitted by Special Use Authorizations will also not be included in the legal description. The parties recognize that these legal descriptions may be incorporated into a National Integrated Land System, a joint project partnership between the Forest Service and the Bureau of Land Management allowing land parcel information to be placed in a Geographic Information System (GIS) environment. These legal descriptions may also be incorporated into the Department's Digital Highway Inventory Program. The parties agree to share land description technologies under this process.

6. DOCUMENT PREPARATIONS and EXECUTION

The Department's District/Regional ROW Federal Land Transfer Coordinator (FLTC) will notify the FHWA Division Administrator of the State's need for r/w across NFSL and will prepare the appropriate documentation referenced in Title 23, CFR, Part 710, Subpart F, Subsection 710.601. The FHWA Division Administrator will notify the R5 Regional Forester, Natural Resource Management Staff, of the State's request, within 30 days, and whether the FHWA finds the request reasonable and necessary for appropriation. For r/w across R4, the Humboldt-Toiyabe National Forest, the FHWA Division Administrator will notify the Forest Supervisor, Humboldt-Toiyabe NF directly.

A Letter of Consent, authorizing the appropriation of NFSL, will be prepared by the R5 Forest Service Regional Office, Natural Resources Management Staff. The document will be signed by the Regional Forester or his/her designated representative and sent to the FHWA Division Administrator. For R4, the Forest Supervisor, Humboldt-Toiyabe NF has been delegated authority by the Regional Forester, Intermountain Region to prepare and sign Letters of Consent authorizing the appropriation of lands within the Humboldt-Toiyabe NF. Under this expedited process, the Forest Service will provide the Letter of Consent to the FHWA within 30 days of the request date. FHWA will provide notice of the receipt of the Letter of Consent to the Department's District/Regional FLTC.

The Department will prepare the highway easement deed, utilizing the narrative legal description format, described in 5. Legal Description above, and forward it to FHWA for review. In accordance with 23 CFR, Part 701.601, the Department's attorney must review the deed and sign the statement certifying it meets State requirements for form and procedure. All Department actions will be completed within 30 days of receipt of the Letter of Consent from FHWA.

Following review by the FHWA R/W Staff, the FHWA Division Administrator will forward the deed to the FHWA Western Legal Services Office for review. Upon determination of legal sufficiency, the FHWA Division Administrator will execute the deed. All FHWA activities will be completed within 30 days of receipt of the highway easement deed.

The deed will then be forwarded to the District/Regional FLTC of the Department for recording in the appropriate county of record. Notice of recording will be provided to the FHWA California Division Office. A copy of the recorded highway easement deed will be provided to the Forest Service for its r/w records.

7. CONFLICT RESOLUTION

All parties agree to work cooperatively to avoid and resolve conflicts at the lowest possible level. If disagreements emerge which cannot be resolved, the following procedure will be followed:

- A. All parties involved must agree that an impasse exists.
- B. All parties involved must be able to respond in the affirmative to the following Statements:
 - 1. The position taken is consistent with my agency's mission.
 - 2. The position taken is legal and ethical.
 - 3. The position taken is good for our customers and acceptable to all cooperators.
 - 4. The position taken makes efficient use of resources.
 - 5. Each party accepts full responsibility for the position he/she is taking.
- C. If each party has honestly answered, "yes" to the above statements and an impasse still remains; the impasse shall be escalated as follows:

FOREST SERVICE	THE DEPARTMENT	FHWA
Transportation Engineer/ Assistant Forest Engineer	District/Regional FLTC	R/W Staff
Forest Engineer Engineering Staff	District Director	R/W Officer
Regional Engineer	Deputy Director Project Delivery	FHWA Division Administrator

- D. When the parties at the lowest level are unable to come to a solution, the problem must be escalated to the next working level. The parties from both levels will establish a meeting date within 5 working days of the documented date of disagreement and will continue to discuss items in an attempt to reach resolution. If an agreement still cannot be reached, the issue will then be escalated to the highest level. A meeting will be held within 5 working days of the documented date of disagreement to affect a resolution that is mutually agreeable among the parties. The resolution achieved will be binding among all parties.

8. OBLIGATION OF FUNDING

This MOU is neither a fiscal nor a funds obligation document and none of the parties are obligated to contribute or invest any money as a result of this MOU. Specific studies, activities and/or projects which involve the transfer of money, services, or property between the parties to this MOU will require execution of agreements or contracts wholly separate from this agreement.

9. PARTICIPATION IN SIMILAR ACTIVITIES

This MOU does not restrict any of the parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

10. OFFICIALS NOT TO BENEFIT

Pursuant to Section 22, Title 41, U.S.C., no member of, or delegate to Congress shall be admitted to any share or part of this agreement, or any benefits that may arise thereof as a result of this agreement.

11. DOCUMENT REVISION

This MOU may be revised as necessary by mutual consent of the parties, by the issuance of a written amendment signed and dated by the parties. The amendment shall become a part of this MOU as if originally written therein.

12. NOTICE OF TERMINATION

The parties may terminate this MOU by providing a sixty-day notice of termination. That notice, if given, shall be in writing and will be provided to the Regional Office of each of the parties at the following addresses listed below:

USDA, Forest Service
R5 - Pacific Southwest Region
Attn: Regional Engineer
1323 Club Drive
Vallejo, CA 94592

FHWA – California Division
Attn: R/W Officer
980 9th Street, Suite 400
Sacramento, CA 95814-2724

State of California, Dept of Transportation
R/W Program
Attn: R/W Project Delivery
1120 N Street
Sacramento, CA 95814

USDA, Forest Service
R4 - Intermountain Region
Attn: Regional Engineer
324 25th Street
Ogden, UT 84401


Unless terminated by written notice, this MOU will remain in full force and effect for ten years from the last date of acceptance by all parties. The parties shall meet annually to review and assess the effectiveness of this agreement and, if necessary, make any needed revisions to the document as specified in Condition 11 of this agreement.

13. APPROVAL

In witness whereof, the parties hereto have executed this agreement as of the last date written below:

APPROVED BY _____
Bradley E. Powell, Regional Forester
USDA FOREST SERVICE
PACIFIC SOUTHWEST REGION
01-MU-11052008-235

Date

APPROVED BY  _____
L Jack A. Blackwell, Regional Forester
USDA, FOREST SERVICE
INTERMOUNTAIN REGION
02-MU-11046000-007

01/23/01

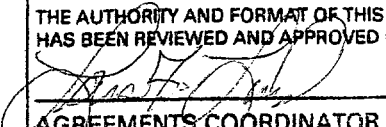
Date

APPROVED BY _____
Brent Felker, Chief Engineer
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Date

APPROVED BY _____
Michael G. Ritchie, Division Administrator
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION

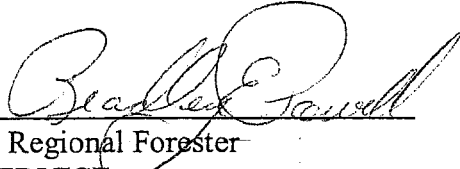
Date

THE AUTHORITY AND FORMAT OF THIS INSTRUMENT HAS BEEN REVIEWED AND APPROVED FOR SIGNATURE	
	<u>01/23/01</u>
AGREEMENTS COORDINATOR	DATE

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10/30/01
Date

APPROVED BY _____
Jack A. Blackwell, Regional Forester
USDA, FOREST SERVICE
INTERMOUNTAIN REGION
02-MU-11046000-007

Date

APPROVED BY _____
Brent Felker, Chief Engineer
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Date

APPROVED BY _____
Michael G. Ritchie, Division Administrator
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION

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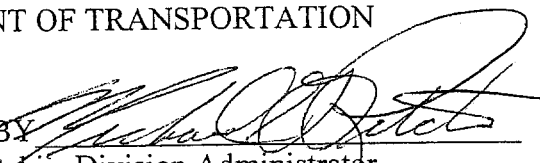
Date

APPROVED BY _____
Jack A. Blackwell, Regional Forester
USDA, FOREST SERVICE
INTERMOUNTAIN REGION
02-MU-11046000-007

Date

APPROVED BY  _____
Brent Felker, Chief Engineer
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

12-3-01
Date

APPROVED BY  _____
Michael G. Ritchie, Division Administrator
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION

12-7-01
Date